

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)	
Complainant)	
)	8 U.S.C. 1324a Proceeding
v.)	
)	OCAHO Case No. 95A00103
COLUMBIA SPORTSWEAR)	
MANUFACTURERS, INC.)	
Respondent)	Judge Robert L. Barton, Jr.

FINAL DECISION AND ORDER GRANTING COMPLAINANT'S
MOTION AND ENTERING DEFAULT JUDGMENT
(October 20, 1995)

I. PROCEDURAL HISTORY

On June 13, 1994, following the receipt of a Notice of Intent to Fine (NIF) on or about May 16, 1994, Respondent requested a hearing by a letter submitted by its attorney Lindsay Collins, Esquire. On June 22, 1995 the Complainant United States of America (Complainant) filed a Complaint with the Office of the Chief Administrative Hearing Officer (OCAHO). Attached to the Complaint was the NIF and the Request for Hearing submitted by Mr. Collins.

The Complaint contains five counts. Count I charges that Respondent hired 25 individuals for employment in the United States after November 6, 1986 knowing that they were not authorized for employment in the United States and/or continued to employ them knowing they were not authorized. Count I asserts that this conduct violated § 274A(a)(1)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324a(a)(1)(A), which make it unlawful, after November 6, 1986, to hire for employment in the United States an alien knowing that the alien is not authorized for employment in the United States. Alternatively Count I charges that Respondent violated § 274A(a)(2) of the INA, 8 U.S.C. § 1324a(a)(2), and 8 C.F.R. § 274a.3 which make it unlawful to continue to employ a an alien not authorized to work in the United States after knowing that such alien is or has become an unauthorized alien with respect to such employment. The Complaint seeks a civil money penalty of \$15,750.00 for the 25 violations alleged in Count I.

Count II asserts that Respondent failed to prepare and/or make available for inspection the employment eligibility verification form (Form I-9) for six named individuals, in violation of § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B), which makes it unlawful after November 6, 1986 to hire for employment in the United States an individual without complying with the requirements of § 274 of the INA, 8 U.S.C. 1324a(b) and 8 C.F.R. § 274a.2(b). Alternatively, Count II charges that Respondent violated § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B) which makes it unlawful, after November 6, 1986, to hire for employment in the United States, an individual without complying with the requirements of § 274A(b)(3) of the INA, 8 U.S.C. § 1324a(b)(3). The Complaint seeks a civil money penalty of \$2,820.00 for the six violations alleged in Count II.

Count III alleges that Respondent failed to ensure that 67 named employees properly completed Section 1 of Form I-9 and failed to properly complete Section 2 of the Form I-9. The Complaint alleges that these failures violate 8 U.S.C. § 1324a(a)(1)(B). The Complaint seeks a civil money penalty of \$31,730.00 for the 67 violations alleged in Count III.

Count IV alleges that Respondent failed to ensure that one named employee properly completed Section 1 of the Form I-9, and that this failure violates § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B), which renders it unlawful after November 6, 1986 for a person or entity to hire for employment in the United States an individual without complying with the requirements of the INA, 8 U.S.C. § 1324a(b)(2) and 8 C.F.R. § 274a.2(b)(1)(i). The complaint seeks a civil money penalty of \$365 for this single violation.

Count V asserts that Respondent failed to properly complete Section 2 of the Form I-9 for ten named individuals, and that this violates § 274A(a)(1)(B) of the INA, 8 U.S.C. § 1324a(a)(1)(B) which renders it unlawful after November 6, 1986 to hire for employment in the United States an individual without complying with the requirements of Section 274(b)(1) of the INA, 8 U.S.C. § 1324a(b)(1) and 8 C.F.R. § 274a.2(b)(1)(ii). The Complaint seeks a civil money penalty of \$3,940.00 for the ten violations alleged in Count V.

In the prayer for relief the Complaint seeks a cease and desist order and a request for payment of a total civil money penalty of \$54,605 for the five counts of the Complaint.

On June 26, 1995 OCAHO served the Complaint and a Notice of Hearing on the parties which specifically stated that the Respondent must file an answer within thirty days after receipt of the Complaint and that failure to file an answer may be deemed to constitute a waiver of the right to appear and contest the allegations of the Complaint. The Notice of Hearing also stated

that if there is a failure to file an answer, the Administrative Law Judge may enter a judgment by default and grant all appropriate relief. This Notice was served on Respondent's counsel Lindsay Collins by certified mail and also was mailed to Respondent. The return receipt card from the U.S. Postal Service indicates that Mr. Collins' office received his copy on July 10, 1995.

On August 28, 1995 Complainant filed a motion requesting that I enter a default judgment because no answer to the complaint had been filed as required by 28 C.F.R. § 68.9(b). The motion was served on the Respondent's counsel by first class mail.

Following receipt of the Motion for Default Judgment, on September 21, 1995 I issued an Order Noting Default and Requiring Respondent to Show Cause Why Complainant's Motion for Default Judgment Should Not Be Granted (Show Cause Order). The Show Cause Order was served on Respondent's counsel by both certified mail and first class mail and on Respondent by first class mail. The Show Cause Order references the Rules of Practice and specifically states that the Rules of Practice require that the Respondent file an answer to the complaint, that failure to do so shall be considered as a waiver of the right to appear and contest the allegations of the complaint, and that the Judge may enter a default judgment if no answer is filed. See 28 C.F.R. § 68.9(a).

Moreover, the Show Cause Order directs Respondent to file an answer within twenty days of the date of the Order and to show good cause why the answer was late. The Show Cause Order further states that if Respondent fails to comply with the Order, I may grant Complainant's motion for default judgment and enter a civil penalty without any further proceedings.

Nevertheless, despite the fact that the return receipt card indicates that Mr. Collins' office received the Show Cause Order on September 27, 1995, no answer, response or communication of any kind has been received from Collins or Respondent.

II. DISCUSSION

As was explained in the Show Cause Order, the Rules of Practice require a respondent to serve an answer to the complaint and provide that failure to do so shall constitute a default. 28 C.F.R. § 68.9. The Rules also provide that a party shall be deemed to have abandoned a request for hearing if the party or his representative fails to respond to orders issued by the Administrative Law Judge. 28 C.F.R. § 68.37(b). Failure to respond to an order to show cause invites a judgment of default, especially where, as here, it appears that Respondent and its counsel have ignored the Court's order and de facto have abandoned

the request for a hearing. See United States of America v. Broker's Furniture and Manufacturing, Inc., et. al., 5 OCAHO 789 (1995); United States v. Hosung Cleaning Corp., 4 OCAHO 681 (1994). Even in cases where they appeared without counsel, parties that failed to obey Judges' orders were found to have abandoned their requests for hearing or to have abandoned their complaints. United States v. Erlina Fashions, Inc., 4 OCAHO 656 (1994); Holquin v. Dona Ana Fashions, 4 OCAHO 605 (1994); Brooks v. Watts Window World, 3 OCAHO 570 (1993); Speakman v. Rehabilitation Hospital of South Texas, 3 OCAHO 476 (1993); Palancz v. Cedars Medical Center, 3 OCAHO 443 (1992).

Here Respondent has been represented and continues to be represented by counsel throughout the proceeding. Mr. Collins filed the Request for Hearing in June on behalf of Respondent and has neither filed a motion requesting to withdraw nor any other document indicating that he does not represent the Respondent. By filing the Request for Hearing, Mr. Collins has entered an appearance in this case and is responsible to his client and the Court for the deadlines established in this case. See 28 C.F.R. § 68.33(b)(5) and (c).

Moreover, in addition to the written notices and orders sent to Mr. Collins, my law clerk called his office several times and left a message requesting Mr. Collins to contact us so we could set a prehearing conference. He failed to return those calls. I must conclude that Mr. Collins neither has faithfully served his client nor fulfilled his duties as an officer of the Court.

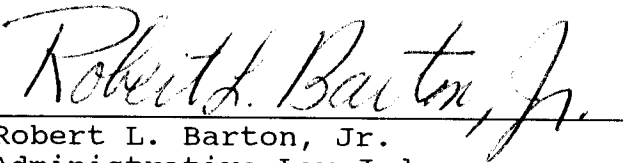
However, although Respondent's counsel has been remiss, Respondent itself does not appear to have been diligent. The Show Cause Order was mailed directly to the Respondent itself, as well as its counsel. Thus, Respondent was notified that its counsel had not filed an answer to the Complaint, that a Motion for Default Judgment had been filed, and that a default judgment would be entered if no answer was filed within twenty days of the date of the Show Cause Order.

Given the failure by Respondent and its counsel to answer the Complaint or take any other action to defend its interests in this matter, I must conclude that Respondent has abandoned its Request for Hearing. Respondent is in default not only for failure to answer the Complaint but also for failure to respond to the Show Cause Order. See 28 C.F.R. §§ 68.9(b) and 68.37(b)(1).

III. FINDINGS, CONCLUSIONS AND ORDER

1. Complainant's Motion for Default Judgment is granted;
2. I find that each and every paragraph of the Complaint, including the five counts and the prayer for relief, has been admitted by Respondent by its failure to answer the Complaint;

3. Respondent shall cease and desist from violating 8 U.S.C. § 1324a(a)(1)((A) and § 1324a(a)(2);
4. Respondent shall pay a civil money penalty of \$54,605.00;
5. The hearing in this case is cancelled


Robert L. Barton, Jr.
Administrative Law Judge

NOTICE REGARDING APPEAL

Pursuant to the Rules of Practice, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief Administrative Hearing Officer (CAHO) a written request for review together with supporting arguments. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become final within thirty days of the date of the decision and order unless the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.53(a).

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a party adversely affected by a final order issued by the Judge or the CAHO may, within 45 days after the date of the final order, file a petition in the United States Court of Appeals for the appropriate circuit for the review of this order. See 8 U.S.C. § 1324a(e)(8).

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 1995, I have served copies of the foregoing Final Decision and Order Granting Complainant's Motion and Entering Default Judgment to the following persons at the addresses shown:


Jason Raphael, Esquire
Immigration & Naturalization Service
P.O. Box 2669
New York, New York 10008-2669
Telephone No.: (212) 264-6423
(Counsel for Complainant)

Lindsay Collins, Esquire
856 Pacific Street
Brooklyn, New York 11238
Telephone No.: (718) 783-4500
(Counsel for Respondent)

Columbia Sportswear Manufacturers
155 27th Street
Brooklyn, New York 11232

Dea Carpenter, Esquire
Associate General Counsel
Immigration and Naturalization Service
425 "I" Street, N.W., Room 6100
Washington, D.C. 20536

Office of Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041



Jonathan E. Katz
Attorney Advisor to
Robert L. Barton, Jr.
Administrative Law Judge
Department of Justice
Office of the Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041
Telephone: (703) 305-1739
FAX: (703) 305-1515